

I. THE PARTIES

3. Plaintiff Brainlabs Digital, Inc. is a Texas corporation with its principal offices in Austin, Texas.

4. Defendant Bed Bath & Beyond Inc. is a New York corporation with its principal offices in Union, New Jersey.

II. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) because the parties are citizens of different states and the matter in controversy exceeds \$75,000.00.

6. This Court has personal jurisdiction over Defendant because it contractually consented to the jurisdiction of the state and federal courts in New York and because it is at home in New York.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(3) because the parties selected the state and federal courts in New York as the exclusive forum for disputes and consented to personal jurisdiction in New York and because no other district in New York has a greater nexus to this dispute.

III. FACTUAL ALLEGATIONS

8. Brainlabs is a top-tier digital marketing agency, servicing clients across five continents. Brainlabs focuses on paid digital search advertising, search engine optimization, social media advertising, influencer marketing, content creation, and conversion rate optimization. Brainlabs counts some of the world's most valuable brands among its roster of clients, including financial firms, big-box retail chains, and international apparel brands.

9. On or about April 17, 2019, Brainlabs and BBBY entered into a written contract (the "**Agreement**") in which the parties agreed to a set of terms by which Brainlabs would provide digital marketing services to BBBY in exchange for certain fees and payments.

10. The initial term of the Agreement commenced on May 1, 2019 and continued for four-months. By agreement of the parties, the term of the Agreement was extended through May 2022.

11. Brainlabs provided digital marketing services to BBY throughout the term of the Agreement and otherwise performed under the Agreement.

12. BBY utilized and benefited from the services provided by Brainlabs.

13. BBY received and paid more than fifty invoices from Brainlabs during the term of the Agreement.

14. In or about April 2022, Brainlabs generated two invoices for work it performed for BBY during the month of April 2022: Invoice number INV-0762 totaled \$148,592.28, and invoice number INV-0771 totaled \$3,557.72 (collectively, the “**April 2022 Invoices**”). The April 2022 Invoices were emailed to BBY on or about May 4, 2022. Payment on these invoices was due no later than June 14, 2022.

15. In mid-May 2022, Brainlabs generated two invoices for work it performed for BBY from May 1 through May 12, 2022: Invoice number INV-0773 totaled \$57,519.59, and invoice number INV-0774 totaled \$1,377.18 (collectively, the “**May 2022 Invoices**,” and together with the April 2022 Invoices, the “**Unpaid Invoices**”).¹ The May 2022 Invoices were emailed to BBY on or about May 20, 2022. Payment on these invoices was due no later than July 15, 2022.

16. BBY has failed to pay the Unpaid Invoices.

17. Following the transmission of these invoices to BBY, Brainlabs sent BBY automated weekly reminders to pay the invoices.

¹ Although the May 2022 Invoices were generated in mid-May, 2022 and transmitted to BBY on or about May 20, 2022, they reflect an “Invoice Date” of May 31, 2022. This is consistent with Brainlabs’ practice of bills containing an Invoice Date of the last day of the month for which they apply.

18. Brainlabs personnel contacted BBY's staff on multiple occasions to follow up on the status of the payment for the Unpaid Invoices, including on September 7, September 14, September 15, September 16, October 19, October 25, November 8, November 9, November 10, and November 14, 2022, among others. BBY staff repeatedly told Brainlabs that the Unpaid Invoices were internally "approved" and "available for payment." However, BBY failed to pay the Unpaid Invoices.

19. On April 4, 2023, the parties entered into a payment plan by which in-house counsel for BBY agreed to pay the entire amount due, in ten weekly installments, starting on April 14, 2023. BBY further breached that payment plan by failing to make payments on April 14, 2023 or at any date thereafter.

FIRST CLAIM
(Breach of the Agreement)

20. Plaintiff incorporates the allegations above, as if fully set forth herein.

21. The Parties entered into an Agreement in April 2019 by which Brainlabs agreed to provide digital marketing services to BBY in exchange for certain fees and payments. The Agreement is a valid and enforceable contract between the parties.

22. Plaintiff performed under the contract, by providing to Defendant the agreed-upon services during the contract term.

23. Defendant utilized and benefited from the services provided by Plaintiff during the term of the Agreement and paid numerous invoices pursuant to the Agreement.

24. Defendant failed to pay four invoices in connection with work Plaintiff performed for Defendant in the final two months of the parties' relationship. Defendant's failure to make payment on the four Unpaid Invoices constitutes a material breach of the Agreement.

25. As a direct and proximate result of Defendant's material breach of the Agreement, Plaintiff has suffered monetary losses in the amount of \$211,046.77.

26. By reason of the foregoing, Plaintiff is entitled to judgment against Defendant for breach of contract in the amount of \$211,046.77, in addition to costs, disbursements, and interest.

FIRST CLAIM
(Account Stated)

27. Plaintiff incorporates the allegations above, as if fully set forth herein.

28. Plaintiff duly issued and transmitted to Defendant the Unpaid Invoices, which set forth in detail all items charged to Defendant and the total amount due and owing by Defendant to Plaintiff.

29. Defendant received the Unpaid Invoices without protest and neither objected to them nor indicated that they were erroneous in any respect. Defendant received numerous reminders and follow-up communications related to the Unpaid Invoices and neither objected to them nor indicated that they were erroneous in any respect on any such occasion. Moreover, on at least two such occasions, Defendant stated that the invoices have been internally "approved" and were "available for payment." Defendant thereby acknowledged that the debt owed to Plaintiff as set forth in the Unpaid Invoices is true and correct.

30. Defendant has not paid the Unpaid Invoices.

31. By reason of the foregoing, Plaintiff is entitled to judgment against Defendant for an account stated in the amount of \$211,046.77, in addition to costs, disbursements, and interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Brainlabs Digital, Inc. requests judgment against Defendant as follows:

- a. For damages in the amount of \$ 211,046.77;
- b. For pre-judgment interest, at nine percent per annum: (i) from June 14, 2022, on account of the April 2022 Invoices, totaling \$152,150.00; and (ii) from July 15, 2022, on account of the May 2022 Invoices, totaling \$58,896.77;
- c. For post-judgment interest, costs, and disbursements; and
- d. For such other and further relief as the Court may deem just and proper.

Dated: April 21, 2023
New York, New York

KASOWITZ BENSON TORRES LLP

By: /s/ David H. Kupfer
David H. Kupfer

1633 Broadway
New York, New York 10019
Tel.: (212) 506-1962
Fax: (212) 506-1800

Attorneys for Plaintiff Brainlabs Digital, Inc.